

THE ROLE OF JUDICIAL INSTITUTIONS IN THE CONTEXT OF LAND ACQUISITION FOR THE CONSTRUCTION OF COAL-FIRED POWER PLANT (PLTU) BATANG INDONESIA: A DISCOURSE OF LEGAL FUNCTIONS

Suhadi, Ridwan Arifin

ABSTRACT

Judicial institutions in the context of legal structure have very important position in law enforcement especially to ensure the justice has been fulfilled to all people. Contemporary conditions of justice in society directly referred to all activities and national projects that related to social welfare and justice. One of the projects is the construction of coal fired-power plant (PLTU) Batang Indonesia. The construction of PLTU of Central Java 2 X 1.000 megawatt (MW) in Batang Regency (PLTU Batang) Indonesia is a national strategic project on electricity that is part of the Masterplan for Acceleration and Expansion of Indonesia's Economy (MP3EI). The power of electricity that is produced by PLTU Batang will be used to increase power supply for Java, Bali and Madura in order to meet the needs of households and industrial electricities. One of the obstacles in this project is related to land acquisition. Using the normative legal research approach, this paper discusses the role of the judiciary in the context of land acquisition for the construction of the PLTU Batang. The result of this study shows that there are three roles of judiciary – that is, dispute settlement on location permit, dispute settlement on land acquisition, and granting petition on deposit compensation payment (consignation). Due to the decision of the court related to location permit, location determination, and deposit compensation payment, the land for the construction of PLTU Batang can be obtained as expected. The land is then juridically controlled by PT. Bhimasena Power Indonesia and PT. PLN (Persero).

Keywords: judicial institutions, land acquisition, location permit, location determination

INTRODUCTION

The development of Indonesia as a developing country provides a broad impact on the needs of various resources. Existing resources, for developing countries like Indonesia strongly support the development of various domestic industries that have an important role in moving the national economy. One need in this case is the need for electric power. The National Energy Management Blueprint document shows the Indonesian government has announced to reach electrification ratio of 95% by 2025.¹ Meanwhile, the capacity of the national electricity system is now in critical condition, indicated by the supply deficit in some provinces. These two things demanding escalation of supply which due to various limitations must be built gradually. One of the efforts that has been and is being done by the government is to implement a program to accelerate the development of 35 coal steam power plants with a total capacity of 10,000 MW. The new plant will be built in various regions throughout Indonesia.²

PLTU Batang is a large power project with 2 X 1000 MW. The development of PLTU Batang is one of the projects that is part of the Master Plan for the Acceleration and Expansion of Indonesian Economic Development (MP3EI). PLTU Batang has been listed in the infrastructure investment table identified in the Java Economic Corridor. In the table PLTU Batang is a project that requires an investment of 36,000 billion, planned to be built starting in 2014 and completed in 2018.³

The National Electricity General Plan 2008 to 2027 as stated in the Decree of the Minister of Energy and Mineral Resources No. 2682K / 21 / MEM / 2008 dated November 31, 2008, estimates electricity demand in Java, Bali and Madura for 2014 of 43,144 MW, electricity supply in Java, Bali and Madura is only about 14,057 MW, for Indonesia needs is estimated at 56,336 MW, while its supply is only 18,015 MW. In further developments, the Batang Power Plant Project is also included in the Electricity Supply Business Plan (RUPTL) of PT PLN Persero 2015-2024 as stipulated in the Decree of the Minister of Energy

-
- ¹ Ministry of Energy and Mineral Resources of the Republic of Indonesia (*Kementerian Energi dan Sumber Daya Mineral Indonesia, ESDM*), 2005, *Blueprint Pengelolaan Energi Nasional*. ESDM, Jakarta, p.6.
 - ² Nyoman S Kumara, 2009, "Telaah Terhadap Program Percepatan Pembangunan Listrik Melalui Pembangunan PLTU Batubara 10.000 MW", *Jurnal Teknologi Elektro*, 8 (1) January-June, pp. 63-68.
 - ³ Appendix I Decree of President of Indonesia No. 48 of 2014 on 28 May 2014 (Peraturan Presiden Republik Indonesia Nomor 48 Tahun 2014, 28 Mei 2014), pp. 55-76

and Mineral Resources of the Republic of Indonesia Number 0074 K / 21 / MEM / 2015 on Ratification of Business Plan of Supply Electricity PT PLN Persero 2015-2024. In the Ministerial Decree explained that Batang PLTU is part of the capacity building program in Java Bali system, especially the addition of Java Bali system power plant.

PLTU Batang is part of a large-scale strategic power plant project that will contribute to the national electricity supply. The data shows that currently the total installed national capacity of 50,000 MW built by PLN and the private sector since PLN stands. Taking into account the economic growth projection of 6-7% a year, in the next 5 years it will need an additional electrical capacity of 35,000 MW or 7,000 MW per year. Therefore, the government has no choice but to increase the electrical capacity of 35,000 MW. This electrical program becomes a national strategic program which is confirmed in the document of the National Medium Term Development Plan 2015-2019. With the additional capacity of the power plant along with its supporting transmission network, the national electricity demand will be sufficient and evenly distributed until the electrification ratio in 2019 reaches 97%. The success of this project, in addition to improving the welfare of society, also encourages economic growth and the absorption of new labor. According to President Joko Widodo when giving direction to the Board of Directors and PLN's ranks on April 7, 2015, the 35,000 MW target is not a mild target, but it must be achieved with hard work. Sufficient electricity is the key to achieving economic growth and people's welfare.⁴

In RUPTL PT PLN (Persero) 2015-2024 also stated that PLTU Batang is the first electricity project using Public Private Partnership (PPP) scheme based on Presidential Regulation No. 67 Year 2005 jo. Presidential Regulation No. 13/2010, a system is needed in 2017 and 2018, but since land acquisition is not yet completed, COD will withdraw to 2019.⁵ With other expressions it can be stated that the delay in the Batang plant is due to land acquisition. In many infrastructure development activities, the problem of land acquisition is indeed one of the obstacles. Soedjarwo Marsoem, Wahjono Adi, and Pieter G. Manoppo even mentioned that land acquisition for public interest is still as "ghost" for infrastructure development.⁶ In the implementation of development, land acquisition activity is a critical point that is very crucial.⁷

Land acquisition practices for the construction of the 2 X 1,000 MW Central Java Steam Power Plant in Batang District (Batang Steam Power Plant) are obtained through two ways, namely (1) location permits granted to business entities (PT Bhimasena Power Indonesia) and (2) land acquisition by the government, the party requiring the land is PT. PLN (Persero). Acquisition of land through location permit indicates that the party requiring the land is a business entity (private), while the acquisition of land through the procurement of land, the party who needs the land is the government agency in this case PT. PLN (Persero) a State Owned Enterprise. Land procurement is done to the parcels of land which cannot be acquired by PT. Bhimasena Power Indonesia by using location permit. Plots of land acquired through land acquisition, their locations are scattered even though they are still within the designated area of the site permit. Land acquired through location permit or land procurement is used to build powerblock of PLTU Batang by PT. Bhimasena Power Indonesia.⁸

In the context of acquisition of land for the construction of Batang power plant, the problem or barrier of land acquisition is shown, among others, from the lawsuit from the public against the Decision of the Regent of Batang Number 460/06/2012 regarding the Granting of Location License for the Power Block Development Needs For PLTU 2 X 1000 MW to PT. Bhimasena Power Indonesia in Ujungnegoro Village, Karanggeneng Village, Kandeman District and Ponowareng Village, District of Tulis Batang Regency. Community lawsuit also happened to Governor of Central Java Decree Number 590/35 Year 2015 About Approval of Stipulation of Land Acquisition Location of Area of Area of 125,146 m² Land of Central Java Steam Power Plant 2 X 1000 MW in Regency of Batang Central Java Province. In addition to the lawsuit against the issuance of location permits and the issue of location determination, the obstacles are also evident from the refusal of the party entitled to

⁴ [Online], "Program Pembangkit Listrik 35.000 MW", retrieved from <http://listrik.org/pln/program-35000-mw/>, access 10 February 2017.

⁵ Acquisition of land in this paper is intended as a way to acquire land that is controlled by other parties that will be used as a construction site of PLTU Batang

⁶ Sudjarwo Marsoem, Wahjono Adi, and Pieter G. Manoppo, 2015, *Ganti Untung Pengadaan Tanah Memetakan Solusi Strategis Pengembangan Infrastruktur di Indonesia*, Jakarta, Renebook, p. 19

⁷ Academic Document of Bill of Act of Land Acquisition for Development of 2010 (Naskah Akademik Rancangan Undang Undang Pengadaan Tanah Untuk Pembangunan, 2010), hereinafter called as *Naskah Ademik RUU Pengadaan Tanah untuk Pembangunan*, p. 18

⁸ Suhadi, 2017, "Perolehan Tanah Untuk Pembangunan PLTU Jawa Tengah 2 X 1.000 MW di Kabupaten Batang: Tanah Untuk Kepentingan Swasta Atau Untuk Kepentingan Umum", *Proceedings*, Seminar Problematika Pertanahan dan Alternatif Penyelesaiannya, Jakarta, Pusat Studi Hukum Agraria Universitas Trisakti dan Sekolah Tinggi Pertanahan Nasional, p. 461

compensation provided by the Land Procurement Committee. In this context, the acquisition of land will always be related to power. Suhadi⁹ stated that

“Law of land acquisition for the development of the public interest is strongly influenced by the power factor. Legislation on land acquisition for the implementation of development in the public interest to show the type of repressive law. Land procurement legislation is more of a State instrument to implement the development agenda. The public interest is not yet a major orientation, as in the implementation of private interest, the interest of the owners of capital and industrial interest that are more mainstream”.

Problem solving in the context of land acquisition for Batang plant construction due to a lawsuit against the issuance of location permit, the issuance of location and rejection of compensation by the entitled party, ultimately involving the judiciary. This paper intends to explain the role of the judiciary in the context of land acquisition for the construction of the Batang power plant. (2) the role of the judiciary in relation to the issuance of a location permit, (3) the role of the judiciary in relation to a lawsuit against the issuance of the location determination land acquisition, and (4) the role of the judiciary in relation to the provision of money for compensation for land acquisition.

METHOD

The research method used in this research is normative law research.¹⁰ Sources of data in this study are secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials.¹¹ The legal substances in question are in the form of (1) laws and regulations governing the State Administrative Court, development plan, MP3EI, electricity supply business, land acquisition, location permit (2) court decision related to state administration disputes due to issuance location permits, land location procurement, and court decisions on land acquisition compensation, (3) books, archives, documents, research results, scientific journals, proceedings of seminars related to the construction of the Batang power plant. Data analysis was done by using qualitative analysis.

DISCUSSION

A. Arrangement of the Role of the Judicial Institution in the Context of Land Procurement

The National Land Law regulates how land acquisition is based on the status of available land. The means of acquisition of land in question is the application of rights, transfer of rights, exemption of rights, and the revocation of rights. Law No. 20/1961 concerning the Revocation of Land and Land-related Rights regulates the procedure of the Revocation of Rights. In this regard, Irene Eka Sihombing states that although the regulation is still valid, however, in Law No. 2 of 2012 on Land Procurement for Development in the Public Interest, there is no way of obtaining it through the revocation of rights. Land acquisition legislation for development for the public interest does not mention at all the revocation of rights as a way of obtaining land for development for the public interest. The mechanisms used by the new regulation are through the judiciary, as well as the use of consignment agencies.¹²

Law No. 2 of 2012 on Land Procurement for Development in the Public Interest (Law on Land Acquisition), in which among others contains provisions related to the judiciary. Strengthening the role of the judiciary in Law No. 2 of 2012 is desired by the legislators, as can be seen in the document of the academic paper of the Land Procurement for Development Bill. The strengthening of judicial institutions is deemed necessary to ensure the independence of decisions in the event of a conflict of rights exercise, by both the public and the government. Strengthening the role of the judiciary is also intended to provide certainty of time in land procurement activities, so that procurement of land is not protracted and development can be

⁹ Suhadi, 2014, “Legal and Power Relationship: Revealing The Myth of Public Interest in Land Acquisition for Development”, *International Journal of Business, Economics, and Law*, 4 (3), June, pp. 75-79.

¹⁰ Normative legal research examines laws that are conceptualized as norms or rules that apply in society and become the reference of everyone's behavior. The applicable legal norm is a positive legal norm written formation of legislation and written legal norms established by the judiciary, as well as written legal norms made by interested parties. *See* Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, Bandung, Citra Aditya Bakti, p. 48.

¹¹ Primary legal materials, secondary legal materials, and tertiary legal materials are the legal literature material that is distinguished from the point of binding force. *See* Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta, RajaGrafindo Persada, pp. 33.

¹² Irene Eka Sihombing, 2017, “Menghidupkan Pencabutan Hak Atas Tanah Sebagai Salah Satu Cara Perolehan Tanah oleh Pemerintah”, *Proceedings*, Seminar: Problematika Pertanahan dan Alternatif Penyelesaiannya, Jakarta, Pusat Studi Hukum Agraria Universitas Trisakti dan Sekolah Tinggi Pertanahan Nasional, p. 361.

implemented as planned.¹³ The role of the judiciary is very important because justice in the context of law enforcement so far is based on the interpretation and perception of law enforcement.¹⁴

The role of the judiciary in the context of land acquisition is first found in land preparation activities. In the preparation stage of land acquisition, there are three activities, namely notification of development plan, initial data of development plan location, and public consultation of development plan. The final result in the preparation stage of land procurement is the determination of the location of land acquisition by the Governor. The role of the judicial institution is in the case of a lawsuit against the determination of the location by the party who objected, as regulated in Article 23 of the Land Acquisition Law, as follows:

- (1) In the event that after determination of the construction site as referred to in Article 19 paragraph (6) and Article 22 paragraph (1) there is still an objection, the Eligible Entity to the determination of the location may file a lawsuit to the local Administrative Court no later than 30 (thirty) working days from the issuance of location determination.
- (2) The State Administrative Court shall decide upon the acceptance or rejection of the lawsuit as referred to in paragraph (1) within 30 (thirty) working days from the receipt of the claim.
- (3) Any party who objected to the decision of the State Administrative Court as referred to in paragraph (2) within 14 (fourteen) working days may file an appeal to the Supreme Court of the Republic of Indonesia.
- (4) The Supreme Court shall render the decision within 30 (thirty) working days from the receipt of the request for the cassation.
- (5) The court's decision that has had legal force remains the basis of whether or not Land Acquisition is procured for development in the Public Interest.

The role of the judiciary in the context of land acquisition is also evident in relation to deliberation and compensation deliberation, as part of the land acquisition procurement stage. The stages of land procurement consist of 5 activities, namely (1) inventory and identification of land ownership, ownership, use and utilization, (2) appraisal of compensation, (3) deliberation, (4) indemnification, and (5) release of agency land. The role of the judiciary in relation to the deliberation of deliberation is found in Article 38 of the Land Acquisition Law, as follows:

- (1) In the event that there is no agreement on the form and/or amount of Indemnification, the Eligible Party may file an objection to the local district court within a maximum period of 14 (fourteen) working days after the consent of indemnification as referred to in Article 37 paragraph (1).
- (2) The district court shall decide the form and / or amount of compensation in no later than 30 (thirty) working days from the receipt of the objection.
- (3) Any party who objected to the decision of the district court as referred to in paragraph (2) within a period of 14 (fourteen) working days may file an appeal to the Supreme Court of the Republic of Indonesia.
- (4) The Supreme Court shall render the decision within 30 (thirty) working days from the receipt of the request for the cassation.
- (5) The decision of the District Court/Supreme Court which has obtained legal force shall remain the basis of payment of Indemnification to the complainant.

The role of the judiciary in relation to the compensation activities associated with the compensation settlement, as contained in Article 42 of the Land Acquisition Law, is as follows:

- (1) In the event that the Eligible Person rejects the form and / or amount of Indemnification based on the result of the deliberation as referred to in Article 37, or the decision of the District Court/Supreme Court as referred to in Article 38, Replacement is deposited in the local district court.
- (2) Loss Preparation other than as referred to in paragraph (1) shall also apply to:
 - a. The party entitled to receive the indemnification is not known to exist; or
 - b. Object of Land Procurement to be granted Compensation:
 1. being the object of court proceedings;
 2. still disputed its ownership;
 3. seized by an authorized official; or
 4. be a guarantee in the bank.

In addition to the role stipulated in the Land Acquisition Law, the role of the judiciary in the context of land acquisition also exists in accordance with the duties and authorities of the judiciary. The State Administrative Court, for example, has the main duty of receiving, examining, deciding and resolving state administrative disputes based on laws and regulations. A state administrative dispute is a dispute arising in the field of state administration between a civilian person or legal entity with a state administrative body or officer as a result of the issuance of a state administrative decision. The role of

¹³ *Naskah Ademik RUU Pengadaan Tanah untuk Pembangunan*, op.cit., p. 43

¹⁴ Ismail Rumadan, 2017, "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian", *Jurnal Rechtsvinding*, 6 (1), April, p. 71.

the Administrative Court in the land acquisition scheme, among others, is in the case of a lawsuit against the issuance of location permit. Article 1 Sub-Article a of the Minister of Agrarian and Spatial / Head of the National Land Agency Number 5 of 2015 concerning Location Permit stipulates that the location permit is a permit granted to a company to obtain the necessary land in the framework of the investment as well as a permit for the transfer of rights; to use the land for investment purposes. The location permit issued by the Regent or Mayor and specifically for the Special Capital Region of Jakarta is published by the Governor. Thus the location permit is a state administrative decision that can be sued to the State Administrative Court.

B. The Role of the Judicial Institution in the event of a Lawsuit against the Issuance of Location Permit

The construction of the Batang PLTU as a whole requires 314.4 hectares of land. The land will be used for construction and operation of Power Block, construction of SUTET 500 KV network, construction of substations, and construction of access road to power block and fly over. Of the total land requirement of 314.4 hectares, the most widespread land is used for the construction of a 226.4 hectare power block located in the Ujungnegoro and Karanggeneng villages, Kandeman's equality and Ponowareng Village, Tulis District of Batang.

Table 1. Land Requirement for Batang PLTU Construction

No	Utilization	Extent	Location
1	Development and operation of Power Block	226,4 Ha	Ujungnegoro Village Karanggeneng Village Ponowareng Village
2	Construction of SUTET 500 KV network	61,4 Ha	Karanggeneng Village Wonookerso Village Ponowareng Village Kenconorejo Village Simbang Jati Village Beji Village Tulis Village Wringin Gintung Village
3	Construction of substations	25 Ha	Simbang Jati Village Beji Village Tulis Village
4	Construction of access road to Power Block and Fly Over	1,6 Ha	Karanggeneng Village Ponowareng Village
Total Land Requirement		314,4 Ha	

Source: Announcement of AMDAL PLTU Development Central Java 2 X 1000 MW Batang District Central Java Province, on October 8, 2012 and October 15, 2012.

In order to obtain land for power block power plant PLTU Batang, PT. Bhimasena Power Indonesia proposed a location permit for the power block power plant of 2 X 1000 MW covering 2,500,000 m² or 250 hectares, located in Ujungnegoro village and Karanggeneng village, Kandeman district and Ponowareng village, District of Batang regency.¹⁵ Permit location of PLTU Batang plant is stated in the Decision of Regent of Batang Number 460/06/2012 dated August 6, 2012 concerning Granting of Location License For Power Block Development Need For 2 X 1,000 MW Power Plant To PT. Bhimasena Power Indonesia In Ujungnegoro Village Karanggeneng Village, Kandeman and Village Ponowareng District Tulis Batang Regency.

The Regulation of the Minister of Agrarian Affairs and Spatial / Head of the National Land Agency Number 5 of 2015 concerning Location Permit affirms that site permits are required before a company executes or disposes of land rights from the community in order to obtain land for investment purposes. Complete Article 1 (a) stipulated that "location permit is a permit granted to a company to acquire the necessary land in the framework of the investment as well as a permit for the transfer of rights and to use the land for the purpose of investing its capital". Definition of location permit in the Regulation of the Minister of Agrarian Affairs and Spatial/Head of National Land Agency Number 5 of 2015 is not different from the previous regulation that is the Regulation of the Minister of Agrarian Affairs No. 2 of 1999, the regulations on location permit applicable at the time of PT. Bhimasena Power Indonesia obtained a location permit.

¹⁵ Decision of Regent of Batang Number 460/06/2012 regarding the Granting of Location License for Power Block Development Needs For PLTU 2 X 1000 MW To PT. Bhimasena Power Indonesia In Ujungnegoro Village, Karanggeneng Village, Kandeman District and Ponowareng Village, District Tulis, Batang

Against the issuance of Regent of Batang Decree Number 460/06/2012 dated August 6, 2012 on the Granting of Location License for Power Block Development Needs For 2 X 1,000 MW Power Plant To PT. Bhimasena Power Indonesia In Ujungnegoro Village, Karanggeneng Village District Kandeman and Ponowareng Village District Tulis Batang District, there is a lawsuit filed to the State Administrative Court of Semarang, registered at the Registrar's Office of the State Administrative Court of Semarang on 21 September 2012 with case register Number: 68/ G/2012/PTUN-SMG.

With a lawsuit against the issuance of this location permit to the State Administrative Court of Semarang means there is a state administrative dispute (TUN dispute). The object of the dispute is the Decree of the Regent of Batang Number 460/06/2012 dated August 6, 2012. With the lawsuit, PTUN Semarang becomes a role in the context of the issuance of this location permit, which examines, decides, and resolves the TUN dispute. In this TUN dispute, the plaintiff argues that in principle the issuance of the object of the dispute has been contradictory to the laws and the general principles of good governance, therefore it shall be declared null and void. On the other hand, the Defendant argues that in essence the issue of the disputed object has met all the provisions of the legislation and the general principles of good governance so that the plaintiff's claim must be declared not accepted or rejected.¹⁶ [16]

PTUN Semarang that check, disconnect and resolve TUN disputes related to the issuance of this location permit in its ruling refuses the plaintiffs claim to the full. The Court is of the opinion that the issuance of the object of dispute, namely the Decision of the Regent of Batang Number 460/06/2012 has been in accordance with the provisions of the prevailing laws and regulations and in accordance with the general principles of good governance, especially the legal certainty principle, the principle of openness, the orderly principle of state administration, and the principle of professionalism and the principle of prioritizing the public interest.¹⁷ In legal opinion it appears that the issuance of Regent of Batang Decree Number 460/06/2012 has prioritized the foundation of legislation, propriety, and justice embodied in consideration given the mentioned related regulations so that in the process of issuing Regent of Batang Decree Number 460 / 06/2012 has been done in accordance with the provisions of laws and regulations, in particular the Regulation of the Minister of Agrarian Affairs Head of the National Land Agency Number 2 Year 1999 on Location Permits. The Government of Batang Regency and PT BPI has also conducted socialization and hearings on the construction of PLTU Batang. In the issuance of Regent of Batang Regent No. 460/06/2012 has also been done coordination and consultation between agencies both in the region and at the center. In addition, the issuance of Regent of Batang Decree Number 460/06/2012 is deemed to have benefits or bring progress in the fields of health, employment, improving the welfare of communities around, increasing the supply of electricity in Central Java.¹⁸

Based on the above description can be stated that the judiciary in the context of acquisition of land for the construction of PLTU Batang role examine, decide and resolve the TUN dispute due to the issuance of TUN decision. The TUN Decision in question is the Bupati Batang Decree Number 460/06/2012 regarding the Granting of Location License for Power Block Development Needs For 2 X 1,000 MW Power Plant To PT. Bhimasena Power Indonesia In Ujungnegoro Village Karanggeneng Village District Kandeman and Village Ponowareng District Tulis, Batang District is the decision of TUN. Article 1 Sub-Article 3 of Law Number 5 Year 1986 as amended by Article 1 Sub-Article 9 of Law Number 51 Year 2009 has formulated a decision of TUN as a written stipulation issued by the State Administration Body or Administrative Officer which contains the legal action of the state administration which in accordance with applicable, concrete, individual and final legislation that creates legal consequences for a person or a civil law entity. Article 47 of Law Number 5 Year 1986 states that "the Court has the duty and authority to examine, decide and resolve the state administration dispute". Under the Law of the Administrative Court, it is clear that the absolute competence of the State Administrative Court is related to the TUN decision.

C. The Role of the Judicial Institution in the event of a Lawsuit against Issuance of Agreement on Determination of Land Procurement Location

Through sale and purchase process based on the location permit obtained, PT. Bhimasena Power Indonesia was unable to obtain the land as needed within the time span provided by the location permit, even though the location permit has been extended through the Bupati Batang Decree Number 460/009/2014 concerning the Extension of Location Permit for the Power Block Power Plant 2 X 1000 MW (Addition Region) in Ujungnegoro Village Kandeman District Batang to PT. Bhimasena Power Indonesia. The inability of PT. Bhimasena Power Indonesia is stated in the letter President Director of PT. Bhimasena Power Indonesia Number 1129 / BPI-IA / IV / 2015 dated April 30, 2015 concerning the partial termination request to the power block location license belonging to PLTU Central Java 2 X 1,000 MW in Batang Regency and Statement Letter stating that BPI cannot buy the fields a certain land area of 12.51 hectares. In relation to the inability of PT. BPI bought the land, Achmad Taqwa Aziz explained that until September 2013 the amount of land that has been acquired reaches about 85 percent

¹⁶ Decision Number 68/G/2012/PTUN-SMG on 1 May 2013, pp. 184-185

¹⁷ *Ibid.*, p. 205

¹⁸ *Ibid.*, p. 204

or about 192 hectares of the total land required 226 hectares.¹⁹ Overall the total land that cannot be released by PT. Bhimasena Power Indonesia covers an area of 125,146 square meters.²⁰

The inability of PT. Bhimasena Power Indonesia to acquire the land within the grace period given because there are some landowners who do not want to release or sell the land. In connection with this matter, the Government of Batang Regency issued a decree termination of location permit, namely Decision of Regent of Batang Number 2601/35/2015 on Termination of Part of Location Permit on Power Block of Central Java Steam Power Plant 2 X 1000 MW in Batang District on behalf of PT. Bhimasena Power Indonesia. The remaining land area of 125,146 m² of land acquisition is finally made through land acquisition.

Land acquisition for Batang plant construction through land acquisition is based on Central Java Governor Decree Number 590/35 Year 2015 About Approval of Stipulation of Land Acquisition Land Location Area of 125,146 m² Construction of Central Java Steam Power Plant 2 X 1000 MW in Batang Regency Central Java Province. In the Decree of the Governor of Central Java Number 590/35 Year 2015 it is clearly stated that the determination of the location given to the Parent Development Unit VIII PT. PLN (Persero) is now the Master Unit of Development of East Java and Bali (JBTB) II PT. PLN (Persero). This means that the agency that needs land related to the remaining land is no longer PT. Bhimasena Power Indonesia but PT. PLN (Persero). The consequence of this is that the budget for land acquisition through land acquisition is the responsibility of PT. PLN (Persero) and land will be utilized by PT. PLN (Persero). The research data shows that the land acquired through the procurement of the remaining land area of 125,146 m² is located in three villages, namely Karanggeneng Village and Ujungnegoro Village, Kandeman District, and Ponowareng Village, District of Tulis Batang Regency. The land that established in the determination of land acquisition location in each village presented in Table 2.

Table 2. Number of Land per villages from the Approval of Stipulation of Land Procurement Location for the Land of Area of 125,146 m²

No	Village	Field Number	Number of Fields / Owners
1	Ujungnegoro	1 to 4 and 33 to 44	16 fields / 10 owners
2	Karanggeneng	5 to 32 and 45 to 66	48 fields / 27 owners 1 field / ground GG
3	Ponowareng	67 to 79 and 80 to 92	12 fields / 12 owners 12 plots of GG land 3 plane / crooked ground
Total			92 fields

Source: Attachment II of Central Java Governor Decree Number 590/35 Year 2015

Determination of land acquisition location for Batang power plant development by Governor refers to Law No. 2 of 2012 on Land Procurement for Development for Public Interest. Article 6 of Law Number 2 Year 2012 stipulates that public procurement of land for public purposes is administered by the Government. Article 19 paragraph (6) of Law Number 2 of 2012 stipulated that the Governor shall determine the location within 14 working days from the receipt of the application for determination by the Agencies requiring the land. Presidential Regulation No. 71/2012 concerning Implementation of Land Procurement for Development in the Public Interest, in Article 1 Sub-Article 13 stipulates that the determination of location shall be the determination of the development site for public interest stipulated by the decree of the governor, which is used as a license for land procurement, land use change, and the transfer of land rights in land acquisition for development to public interest.

Against the issuance of Central Java Governor Decree Number 590/35 Year 2015 About Approval of Stipulation of Land Acquisition Land Location Area of 125,146 m² Construction of Central Java Steam Power Plant 2 X 1000 MW in Batang Regency of Central Java Province, there is a lawsuit filed to Administrative Court State of Semarang, registered at the Registrar's Office of the State Administrative Court of Semarang dated 14 August 2015 with Case Number: 049 /G/2015/PTUN-SMG.

With the lawsuit against the issuance of this location to the State Administrative Court of Semarang means there is a state administrative dispute (TUN dispute). The object of the dispute is the Decision of the Governor of Central Java Number 590/35 Year 2015. With the lawsuit, the judicial institution in this case PTUN Semarang becomes a role in the context of the issuance

¹⁹ Achmad Taqwa Aziz, 2014, "Masalah Pengadaan Tanah Untuk Pembangunan PLTU di Batang", *Bhumi, Jurnal Ilmiah Pertanahan*, PPPM-STPN, Number 40 of 13, October, p. 610.

²⁰ See Appendix II of Central Java Governor Decree Number 590/35 of 2015 on Approval of Stipulation of Land Procurement Location of Area of Area of 125.146 m² Construction of Central Java Steam Power Plant 2 X 1000 MW in Batang Regency Central Java Province

of land location procurement, namely checking, deciding, and resolving the TUN dispute. In this TUN dispute, the plaintiffs principally object to the issuance of the object of the dispute because it contains an element of violation of the Law and the general principles of good governance. On the other hand, the Defendant, the Governor of Central Java, postulates that in essence the act of publishing Decision of the Governor of Central Java Number 590/35 Year 2015 has complied with all the provisions of the legislation and general principles of good governance.²¹

PTUN Semarang who checks, disconnects and resolves TUN disputes related to the issuance of this location stipulation approval in its verdict rejects the plaintiff's claim in its entirety. The Court is of the opinion that the issuance of the object of dispute, namely the Decision of the Governor of Central Java Number 590/35 Year 2015 has been in accordance with the provisions of the applicable legislation in terms of authority, formal procedural and substance / material. Thus, the Central Java Governor Decision Number 590/35 of 2015 issued by the Governor of Central Java does not violate the principle of legal certainty, the orderly principle of state administration, the principle of public interest, the principle of openness, the principle of proportionality, the principle of professionalism and the principle of accountability.²² In the legal consideration it appears that the issuance of Central Java Governor Decree Number 590/35 of 2015 stems from the provisions of applicable laws and regulations, namely the provisions of Article 6, Article 19 paragraph (6) and Article 22 paragraph (1) Law No. 2 Year 2012 *jo.* Article 1 Sub-Article 13 and Article 41 of Presidential Regulation Number 71 Year 2012. From the aspect of formal procedure in this case is stage phases conducted before the issuance of Central Java Governor Decree Number 590/35 Year 2015, the court is of the opinion that all stages of land acquisition for the public interest, such as planning, preparation, execution, and delivery of results have been made. The Court is of the opinion that the land acquisition procedure carried out by the Governor of Central Java does not contain procedural defects. The act of Governor of Central Java in order to provide land for the construction of 2 X 1,000 MW PLTU in Batang cannot be said to be contradictory to the rights of the people affected by the development of PLTU Batang because the action is the obligation mandated by the Law. In addition, land acquired from land acquisition granted to PT. PLN (Persero) Development Unit VIII is right because of PT. PLN (Persero) is a state-owned company that can carry out electricity supply, electric power transmission, distribution of electric power and / or sale of electric power. Appointment of location of land acquisition of land area of 125,146 square meter of Batang PLTU development in Village Ujungnegoro Kandeman District Batang District has been in accordance with applicable laws and regulations.²³

Against the Verdict of PTUN Semarang Number 049 / G / PTUN-SMG, the plaintiff filed an appeal to the Supreme Court, the Cassation Appeal Deed No. 049/G/2015/PTUN.Smg dated October 22, 2015, followed by a Cassation Memory received at the Court Clerk State Administration of Semarang on 4 November 2015.²⁴ In its Decision Number 02 K/TUN/2016 dated 24 February 2016, the Supreme Court, which examined and adjudged the appeal, declared that the appeal of the cassation was unacceptable. The legal considerations used are that the request for cassation has exceeded the time limit specified in Article 46 paragraph (1) of Law Number 14 of 1985 regarding the Supreme Court as amended by Law Number 5 Year 2004 and the second amendment with Law Number 3 of 2009.

Based on the above description can be stated that the judiciary in the context of acquisition of land for the construction of PLTU Batang has a role to examine, decide, and resolve the TUN dispute due to the issuance of the decision of state administration. The TUN Decision in question is the Decision of the Governor of Central Java Number 590/35 Year 2015 Concerning Approval of Stipulation of Land Procurement Location of Area of Area of 125.146 m² of Construction of Central Java Steam Power Plant 2 X 1000 MW in Batang Regency of Central Java Province.

D. The Role of the Judicial Institution Related to the Existence of Replacement for Land Acquisition

The role of the judiciary in the context of land acquisition for the construction of the Batang steam power plant is also evident in the case of money laundering. Article 42 of Law Number 2 of 2012, among others, stipulates that in the event that the party is entitled to reject the form and / or amount of compensation based on the result of deliberation or decision of the court / Supreme Court, compensation shall be deposited in the local district court. Custody compensation other than due to parties who is entitled to reject the form and amount of the compensation, the money of compensation shall also be made against the party entitled to receive compensation for unknown existence and the object of procurement of land to be compensated (1) being the object of the case in court, (2) still disputed its ownership, (3) seized by an authorized official or (4) a security in the bank.

Custody compensation is carried out by land acquisition in need of land so that development for the public interest is not impeded so that with the application of consignment in land procurement for public interest development can be implemented. However, with the implementation of development for the public interest, it must respect and protect the former holder of land,

²¹ Decision Number 049/G/2015/PTUN-SMG on 5 October 2015, p. 144.

²² *Ibid.*, p. 205

²³ *Ibid.*, pp. 147-163

²⁴ Decision Number 02 K/TUN/2016

building, plants and other land rights in accordance with the prevailing provisions so that the legal interests of former holders of land rights remain protected. In other words, the interest of the former holder of the right to land, whether individual or society is not harmed, therefore able to guarantee justice and the improvement of the welfare of former holder of land rights whose land is released or exempted for the construction of public interest.

In the context of land acquisition of 125,146 m² of land for the construction of Batang power plant, the loss-making custody is done because the party is entitled to reject the form and amount of the compensation. Total number of land each villages of land settlements to lose and it is deposited on the State District Court (consignment) because the party entitled to refuse to accept payment of compensation as many as 92 fields, consisting of 87 parcels of land owned by individuals and 5 plot Village Ponowareng (3 fields village cash ground and 2 pieces of crooked land).²⁵ The determination of the Batang District Court relating to this money laundering deposit is listed in Case No. 1/Pd t.Cons /2015/PN Btg sd Case No. 92 / Pdt.Cons 2015/PNBtg. From 92 of land settlements losses deposited in Batang District Court, the amount of money for damages of at least Rp.9.268.000 and at most Rp.657.681.200. From 92 plots of land until June 2017 the compensation money has been taken as many as 16 fields and that has not taken 76 fields. With regard to remuneration not yet taken, from October 2, 2015, the money was deposited with the Central Java Regional Development Bank in the form of a Special Demand (*Giro Khusus*), but since March 3, 2016, the account was transferred to BRI Bank with a Common Demand (*Giro Umum*), with monthly *Giro* service deposited as PNB State District Courts Batang.²⁶

CONCLUSION

The role of the judiciary in the context of acquisition of land for the construction of the Batang PLTU is 3, namely to receive, decide and resolve the state administrative dispute related to the issuance of location permit, receive, decide and resolve the state administrative dispute related to the determination of land procurement location, and grant the request for money deposit compensation for land acquisition (consignment) filed by the land procurement committee. With the role of the judiciary through court decisions then P. Bhimasena Power Indonesia as the party who builds, owns and operates Batang Power Plant can do land acquisition for the interest of PLTU Batang development. Through the court decision related to land location procurement, PT. PLN (Persero) can continue its activities at the stage of land acquisition implementation. Through the court's determination of the cash compensation (consignment), the PT. PLN (Persero) can use the land for the construction of PLTU Batang. The role of the judiciary in the context of the acquisition of land for the construction of the Batang power plant is passive, in the sense that it plays a role when there are lawsuits and appeals directed to the judiciary. However, the role of the judiciary contributes to the realization of legal certainty, including the timing of the implementation of development.

BIBLIOGRPAHY

Books

- Kementerian Energi dan Sumber Daya Mineral Republik Indonesia (Ministry of Energy and Mineral Resources of Indonesia). *Blueprint Pengelolaan Energi Nasional*. (Jakarta: Kementerian ESDM RI, 2005)
- Marsoem, Sudjarwo, Wahjono Adi, dan Pieter G. Manoppo. *Ganti Untung Pengadaan Tanah Memetakan Solusi Strategis Pengembangan Infrastruktur di Indonesia*. (Jakarta: Renebook, 2015)
- Muhammad, Abdulkadir. *Hukum dan Penelitian Hukum*. (Bandung: Citra Aditya Bakti, 2004).
- Dewan Perwakilan Rakyat (House of Representative). *Naskah Akademik Rancangan Undang Undang Tentang Pengadaan Tanah Untuk Pembangunan*. (Jakarta, 2010)
- Soekanto, Soerjono dan Sri Mamudji. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. (Jakarta: RajaGrafindo Persada, 2001)

Paper, Article, Research Report, Proceedings

- Aziz, Achmad Taqwa. 2014. "Masalah Pengadaan Tanah Untuk Pembangunan PLTU di Batang" *Bhumi, Jurnal Ilmiah Pertanahan*. PPPM-STPN 40 (13): 601-620
- Kumara, Nyoman S. 2009. "Telaah Terhadap Program Percepatan Pembangunan Listrik Melalui Pembangunan PLTU Batubara 10.000 MW", *Jurnal Teknologi Elektro*, January-June 8 (1): 63-68.
- Rumadan, Ismail. 2017. "Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian" *Jurnal Rechtsvinding*, 6 (1): 69-87.
- Sihombing, Irene Eka. 2017. "Menghidupkan Pencabutan Hak Atas Tanah Sebagai Salah Satu Cara Perolehan Tanah oleh Pemerintah", *Prosiding Seminar: Problematika Pertanahan dan Alternatif Penyelesaiannya*. (Jakarta: Pusat Studi Hukum Agraria Universitas Trisakti dan Sekolah Tinggi Pertanahan Nasional, 2017).
- Suhadi. 2017. "Perolehan Tanah Untuk Pembangunan PLTU Jawa Tengah 2 X 1.000 MW di Kabupaten Batang: Tanah Untuk Kepentingan Swasta Atau Untuk Kepentingan Umum" *Prosiding Seminar: Problematika Pertanahan dan Alternatif*

²⁵ Batang District Court (Pengadilan Negeri Batang), *Rekapitulasi Uang Konsinyasi per 22 June 2017*

²⁶ Batang District Court (Pengadilan Negeri Batang), *Ibid*, p. 4.

Penyelesaiannya. (Jakarta: Pusat Studi Hukum Agraria Universitas Trisakti dan Sekolah Tinggi Pertanahan Nasional, pp. 461-473

Suhadi. 2014. "Legal and Power Relationship: Revealing The Myth of Public Interest in Land Acquisition for Development" *International Journal of Business, Economics, and Law* 4 (3): 75-79

Online Sources

[online]....."Program Pembangkit Listrik 35.000 MW", retrieved from <http://listrik.org/pln/program-35000-mw/>, access 10 February 2017

Laws and Regulations

Law No. 5 of 1986 concerning to Administrative Court, (Undang Undang Republik Indonesia Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara)

Law No. 51 of 2009 concerning to Second Revision of Law No. 5 of 1986 concerning to Administrative Court, (Undang Undang Republik Indonesia Nomor 51 Tahun 2009 tentang Perubahan Kedua Atas Undang Undang Nomor 5 Tahun 1986 tentang Peradilan Tata Usaha Negara)

Law No. 2 of 2012 concerning to Land Acquisition for Development of Public Interest (Undang Undang Republik Indonesia Nomor 2 Tahun 2012 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum)

Decree of President No. 48 of 2014 concerning to Revision of Decree of President No. 32 of 2011 concerning to Grand design for Acceleration and Expansion of Indonesia's Economy 2011-2025 (Peraturan Presiden Republik Indonesia Nomor 48 Tahun 2014 tentang Perubahan Atas Peraturan Presiden Nomor 32 Tahun 2011 tentang Masterplan Percepatan dan Perluasan Pembangunan Ekonomi Indonesia 2011-2025)

Governor Decree of Central Java No, 590/35 of 2015 about Approval of Stipulation of Land Acquisition Location of Area of Area of 125,146 m2 Land of Central Java Steam Power Plant 2 X 1000 MW in Regency of Batang Central Java Province (Keputusan Gubernur Jawa Tengah Nomor 590/35 Tahun 2015 Tentang Persetujuan Penetapan Lokasi Pengadaan Tanah Sisa Lahan Seluas 125.146 m2 Pembangunan Pembangkit Listrik Tenaga Uap Jawa Tengah 2 X 1000 MW di Kabupaten Batang Provinsi Jawa Tengah)

Regent of Batang Decree No. 460/06/2012 concerning to Granting of Location License for the Power Block Development Needs For PLTU 2 X 1000 MW to PT. Bhimasena Power Indonesia in Ujungnegoro Village, Karanggeneng Village, Kandeman District and Ponowareng Village, District of Tulis Batang Regency (Keputusan Bupati Batang Nomor 460/06/2012 tentang Pemberian Izin Lokasi Untuk Keperluan Pembangunan Power Block Untuk PLTU 2 X 1000 MW Kepada "PT. Bhimasena Power Indonesia" Di Desa Ujungnegoro, Desa Karanggeneng Kecamatan Kandeman dan Desa Ponowareng, Kecamatan Tulis Kabupaten Batang)

Regent of Batang Decree No. 460/009/2014 concerning the Extension of Location Permit for the Power Block Power Plant 2 X 1000 MW (Addition Region) in Ujungnegoro Village Kandeman District Batang to PT. Bhimasena Power Indonesia (Keputusan Bupati Batang Nomor 460/009/2014 tentang Pemberian Perpanjangan Izin Lokasi Untuk Keperluan Pembangunan Power Block PLTU 2 X 1000 MW (Penambahan Wilayah) Di Desa Ujungnegoro Kecamatan Kandeman Kabupaten Batang Kepada PT. Bhimasena Power Indonesia)

Regent of Batang Decree No. 2601/35/2015 concerning Termination of Part of Location Permit on Power Block of Central Java Steam Power Plant 2 X 1000 MW in Batang District on behalf of PT. Bhimasena Power Indonesia (Keputusan Bupati Batang Nomor 2601/35/2015 tentang Pengakhiran Sebagian Izin Lokasi Terhadap Power Block Pembangkit Listrik Tenaga Uap Jawa Tengah 2 X 1000 MW di Kabupaten Batang Atas Nama PT. Bhimasena Power Indonesia)

Supreme Court Decision Number 02 K/TUN/2016 (Putusan Mahkamah Agung Republik Indonesia Nomor 02 K/TUN/2016)

Decision/Judgment of Semarang Administrative Court Number 049/G/2015/PTUN-SMG (Putusan Pengadilan Tata Usaha Negara Semarang Nomor 049/G/2015/PTUN-SMG)

Decision/Judgment of Semarang Administrative Court Number 62/G/2015/PTUN-SMG (Putusan Pengadilan Tata Usaha Negara Semarang Nomor 62/G/2015/PTUN-SMG)

Correspondence Author

Suhadi

Faculty of Law, Universitas Negeri Semarang (UNNES), Indonesia

K Building 2nd Floor, UNNES Sekaran Campus, Semarang

Doctoral Candidate of Faculty of Law, Universitas Diponegoro (UNDIP), Semarang

Email: suhadi@mail.unnes.ac.id

Ridwan Arifin

Expert Staff of Legal Aid Center, Faculty of Law, Universitas Negeri Semarang (UNNES)

K Building 1st Floor, UNNES Sekaran Campus, Semarang

Email: ridwan.arifin@mail.unnes.ac.id